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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/784,049

02/20/2004

Isabel M. Lima

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11/20/2008

USDA-ARS-OFFICE OF TECHNOLOGY TRANSFER
NATIONAL CTR FOR AGRICULTURAL UTILIZATION RESEARCH
1815 N. UNIVERSITY STREET
PEORIA, IL 61604

EXAMINER

HENDRICKSON, STUART L

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

11/20/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/784,049

Applicant(s)

LIMA ET AL.

Examiner

Stuart Hendrickson

Art Unit

1793

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/4/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-24 is/are pending in the application.
- 4a) Of the above claim(s) 22-24 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2 and 4-14 is/are allowed.
- 6) ☒ Claim(s) 15-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The newly submitted claims 22-24 are directed to an invention which is distinct from that previously presented because they represent the use of the product, classified in class 210 (versus class 502 of the product). The product can be used in a materially different manner, such as gas sorption/air separation or as a filler. Therefore, these claims are withdrawn from consideration by virtue of being patentably distinct from what was originally presented and being a burden to search.

Claims 15-21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chen in view of Shinogi 'Basic ...' article and Chiang. Chen teaches on pgs. 1 and 3 active carbon from sludge. Chiang teaches in the opening paragraph that sewage contains a lot of phosphorus, confirmed by pg. 663 of Shinogi. No difference is seen in the present product versus the references discussed in the specification; the Office need not show the same process of a product-by-process claim.

Claims 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carugati et al. 5391534 taken with Landis 5695554 and Shinogi 'Pyrolysis ...' article.

Carugati teaches in col. 1 activating humic acid (which Landis col. 2 teaches is found from carbonized manure) to form a high surface area active carbon. Using poultry manure as the source of humic acid is an obvious expedient to avoid polluting rivers/watersheds from the waste and to provide an inexpensive source of carbon- as indicated by Shinogi.

The active carbon made makes claims 15-20 unpatentable; no difference is seen.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carugati et al. 5391534 taken with Landis 5695554 as applied to claims 15-20 above, and further in view of Shinogi 'Basic ...' article and Chiang article.

The above references do not teach phosphate content, however Chiang teaches in the opening paragraph that sewage contains a lot of phosphorus, confirmed by pg. 663 of Shinogi.

Applicant's arguments filed 9/4/08 have been fully considered but they are not persuasive.

The argument that Chen is not activated is not persuasive in view of the use of Zn chloride, a well known activating agent. If applicants disagree that this is so, they should provide a declaration including the penalty-of-perjury-clause. Furthermore, the argument fails on its face because the reference repeatedly uses the term 'activated carbon'. The teachings of the other references are not relevant because Chen teaches the area claimed. No difference is seen in the sorption properties. No argument has been advanced that the Carugati product is different from what is claimed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (571) 272-1351.

/Stuart Hendrickson/
examiner Art Unit 1793